

PAGES 8 and 9 SEALED BY ORDER OF THE COURT.

October 26, 2015

Hon. Raymond J. Dearie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: United States v. Akmal Narzikulov
Docket No.: 13 Cr 601 (RJD)

Dear Judge Dearie:

As you are aware, I represent Mr. Akmal Narzikulov in the above referenced matter. Mr. Narzikulov is scheduled to be sentenced by Your Honor pursuant to his plea of guilty to Count Two of the above referenced Indictment before the Hon.

Magistrate Judge Robert M. Levy on February 3, 2015.

Count Two of the Indictment charges Mr. Narzikulov with Conspiracy to Commit Mail Fraud Through Bribery in violation of 18 USC § 1349. Please accept this letter as a Pre-Sentence Memorandum submitted on Mr. Narzikulov's behalf. In view of certain information included in this submission, it is respectfully requested that it be filed under seal.

Mr. Narzikulov pleaded guilty pursuant to a Plea Agreement with the Government which estimated his adjusted offense level to be 25 and his criminal history category to be I resulting in an estimated guidelines range of 57 to 71 months incarceration (Court Exhibit "1", par. 2, pp 2-4).

Background

Mr. Narzikulov was arrested on September 25, 2013 in connection with these charges. Essentially, Mr. Narzikulov was charged, and pleaded guilty, to having assisted individuals to cheat on the written/audio portion of the Commercial Drivers' License Examination administrated by The New York State Department of Motor Vehicles (DMV) from on or about April 1, 2013 to September 25, 2013 by providing applicant's with coded pencils with the answers to the examination. Applicants who passed the test were thereafter issued CDL Learner's Permits by the DMV (P.S.R. par. 3 - 6, 8).

Upon his arrest, agents recovered five (5) coded pencils from Mr. Narzikulov's vehicle. Mr. Narzikulov was charged along with co-defendants Firdavs Mamadaliev, Dale Harper, Joachim Pierre Louis, Luc Desmangles, Beayaeh Kamara, Tanael Daniel, Marie Daniel, Innocente Rene Gonzalez-Martinez, Latoya Bourne and Jose Payano. According to the P.S.R., however, only co-defendant Mamadaliev was involved with the defendant in the scheme involving coded pencils. (P.S.R. par. 8, 24, 25)¹

¹ Mr. Mamadeliev pleaded guilty to a single count information charging him with the Unlawful Production of an Identification Document in violation of 18 USC § 1028(a)(1) and is awaiting sentencing (P.S.R. par. 24, 25).

Another scheme alleged in the indictment involved assisting applicants to cheat on the CDL exam by arranging for them to leave the testing area with the uncompleted test by bribing security guards, having someone else, in particular co-defendant Marie Daniel, take the test for the applicant, and thereafter returning to the testing room, again with the assistance of security guards, and handing in the completed test to DMV personnel for grading.

Co-defendants Mariel Daniel, Latoya Bourne, (a security guard), Innocente Rene Gonzalez-Martinez (a security guard) and Jose Payano, pleaded guilty to charges related to that scheme.²

The remaining defendants, Dale Harper, Joachim Pierre Louis, Luc Desmangles, Beayaeh Kamara (a security guard) and Tamael Daniel were also charged with the substitute test taking scheme and were each found guilty after a jury trial presided over by Your Honor from July 14 through July 16, 2015. Each awaits sentencing.

According to the PSR, "on occasion [Mr.] Narzikulov brought CDL applicants to a DMV office at 11 Greenwich Street in lower Manhattan...[where] he obtained the assistance of a group of co-conspirators, including Joachim Pierre Louis, Jose Payano, Luc Desmangles and Tanael Daniel" in connection with the substitute test takers scheme involving security guards Latoya Bourne and Beayaeh Kamara. (P.S.R. par. 9, 10). However, a review of the trial transcript reveals that Mr. Narzikulov's name is never mentioned in connection with that scheme.

² Mr. Payano was sentenced on May 14, 2015 by the Court to 28 months incarceration in connection with his plea of guilty. On October 7, 2015, this Court sentenced Mr. Bourne and Ms. Gonzalez Martinez, to three (3) years probation to run concurrently on each of the counts (Counts One and Two) to which they pleaded guilty. Ms. Daniel is awaiting sentencing.

Guidelines Calculations

The Probation Department calculations of the applicable guidelines range and criminal history are consistent with the estimate contained in the Plea Agreement (P.S.R. par. 33 – 47). Of note, however, is the analysis of the “value of the payments” per guidelines 2C1.1(b)(2), 2B1.1 and 2B1.1(b)(3)(F) (P.S.R. par. 35). The Probation Department notes that “[t]he Government advised that the NYS DMV identified at least 155 recipients of CDLs or learner’s permits which were obtained through the cheating scheme. The conspirators charged each applicant between \$1,000.00 and \$2,500.00 for their services. Consequently, the payments totaled at least \$155,000.00”. (P.S.R. par. 35)

This calculation is utilized for each of the defendants referenced in the PSR. See, P.S.R. par. 17, 19, 20, 22, 23, 25, 28). As pointed out above, however, there were essentially two (2) schemes alleged in the indictment, one involving the use of coded pencils in which Mr. Narzikulov was primarily involved and one that utilized substitute test takers. The Probation Department makes no effort to quantify the payments attributed to each of the schemes.

In any event, the Probation Department concludes that pursuant to the advisory guidelines, based on the total offense level of 25 and a criminal history category of I, the defendant’s guidelines imprisonment range is 57 to 71 months followed by a term of supervised release of 1 to 3 years (P.S.R. par. 88, 90).

Personal History and Background

As reported by the Probation Department and verified by his family, Mr. Narzikulov has a close relationship with his family who are "highly" supportive (P.S.R. par 53).

Mr. Narzikulov was born and raised in Samarkand, Uzbekistan on January 3, 1984. He immigrated to the United States in 2006 and settled in Brooklyn, New York. Following the defendant's arrest in this matter his parents immigrated to the United States and took up residence in the defendant's apartment at 760 67th Street, Apartment 3C, Brooklyn, New York 11220. At the time, the defendant's wife and young son resided in the apartment as well. (P.S.R. par. 55 – 57)

Since arriving in the United States, Mr. Narzikulov has held a series of relatively low paying jobs as a home health aid, ambulette driver, taxi driver, waiter, furniture mover and construction laborer. (P.S.R. par. 71 – 78) It appears that he filed federal income tax returns as required. (P.S.R. par. 80)

Several months after his parents moved into the apartment, the defendant's wife and child vacated the premises and now reside with her parents in Brooklyn. Though the defendant maintained contact with his wife and child immediately following his arrest, it appears that his legal difficulties have caused a strain in the marriage. (P.S.R. par. 57) He has had no contact with his wife and child since July 2014 and believes they may have returned to Uzbekistan.

Further, though his parents advised the Probation Department that it was their intention to maintain the apartment, I am advised that the landlord has taken steps to terminate their tenancy as the apartment was originally leased to Mr. Narzikulov.

Despite these personal and family difficulties, Mr. Narzikulov's family remains supportive of him. Attached are a series of character references that have been translated into English from the defendant's parents, family and friends, many of whom still reside in Uzbekistan. (Exhibit "A")

In addition to the strain Mr. Narzikulov's legal difficulties have had on his personal and family life, as the Court is aware, his conviction in this matter subjects him to deportation.

Mr. Narzikulov has been incarcerated in the M.D.C. since October 2013 and was housed in the Special Housing Unit from February 2015 until July 2015. In March 2014, Mr. Narzikulov was violently assaulted by an inmate who struck him with a lock concealed in a sock. As confirmed by M.D.C. records, Mr. Narzikulov suffered a left orbital wall fracture which affected his vision and required extensive medical treatment. Mr. Narzikulov's father has also expressed concern that the assault has had a negative effect on his son's mental condition (P.S.R. par. 65), a concern borne out by the M.D.C. medical records. A copy of Mr. Narzikulov's medical records from the M.D.C. are attached as Exhibit "B".

Conclusion

The instant offense represents Mr. Narzikulov's only known conviction. The advisory guidelines call for a sentence of imprisonment from fifty-seven (57) to seventy-one (71) months. However, the Probation Department has recommended a sentence of forty-two (42) months followed by a one (1) year term of supervised release. In arriving at their recommendation, the Probation Department has taken into consideration the fact that Mr. Narzikulov's physical and mental health have been problematic over the past year, particularly during his time in SHU.

Not only was Mr. Narzikulov seriously assaulted during his incarceration, but as the Probation Department has observed, the segregated incarceration experienced by Mr. Narzikulov is considered an extraordinary circumstance warranting sentencing consideration. The Probation Department also notes that the fact that the defendant is subject to deportation also merits consideration.

It is respectfully submitted that the factors outlined by the Probation Department as well as others merit a sentence even below that recommended by the Probation Department.

A sentence below the forty-two (42) months recommended by the Probation Department would be sufficient, but not greater than necessary, to comply with the goals set forth in 18 U.S.C. § 3553(1).

Respectfully submitted,

Michael A. Marinaccio, Esq.

MAM/jm

cc: AUSA Michael H. Warren
271 Cadman Plaza East
Brooklyn, New York 11201

MAM/Narzikulov/PreSentMemo

To Federal Judge Raymond J. Dearie
From Zulayhon Kurbanova
Tel: 347-294-7568

Honorable Raymond J. Dearie,

My son Akmal Narzikulov was born in 1984. He started school in 1991. He was a good pupil. He completed 9 grades. There were no complaints. He got enrolled in a college, from which he graduated with good grades. He served in the military. He was an obedient child. Everybody was praising him as very neat and kind-hearted. He fell in line with everybody. One would not hear a single bad word from him. We were satisfied with our son.

Then he won a Green Card and moved to America. He worked as a cook, a home attendant, a construction worker... In recent times, he worked at a car service as a driver.

He is a good family man, he is married and he has a son. He thinks about everybody and he is worried about his parents. We all love him and are worried about him.

To the Federal Judge
Raymond J. Dearie
From Odiljon Narzikulov
Tel: 347-469-5838

Honorable Judge Dearie,

My son Akmal Narzikulov year of birth 1984, finished school, got into college, finished it , and received Diploma of an Economist of a Food Industry. He served the Army.

After serving he worked at a restaurant on his profession. In 2006 he won Green Card in a lottery, and came to America.

In America he worked as a cook, as a home attendant, as a loader until he started getting used to New York, then he started working at a Car Service.

In 2011 he got married, in 2012 his son was born, the boy is growing, he is 3 years old, misses him.

Few times Akmal took a loan at Citi Bank, and always paid on time, he has a good credit history. Everyone who knows him speaks in high terms about him, and they thank me for a good upbringing, it pleases me a lot. Akmal is a good family man, caring son, decent young man.

Odiljon Narzikulov: Signature

**To: Federal Judge
Raymond J. Dearie
From: Rustam Abduhalikov**

Tel: 347-709-0909

Honorable Judge Raymond J. Dearie,

I, Rustam Abduhalikov know Akmal Narzikulov since young age, when he still was living in Samarkand, he grew up in front of our eyes, his parents are nice people, they did a wonderful job raising their children, especially Akmal, he is responsive, social, kind, and a nice person. In 2013 upon my arrival to the United States, He met me at the airport, helped me with a place to live, with getting a job, and later on with obtaining a car for me. He always respected each and every person, and helped with whatever he could.

Sincerely,

RUSTAM ABDUHALIKOV Signature

**Honorable Raymond J. Dearie
United States District Court
Eastern District of New York**

Characteristic for Akmal Narzikulov

Akmal Narzikulov is a good, kind, responsible and goal-oriented person. I have known him since birth; he was brought up in one of the most respected families in the city of Samarkand. I can characterize him as a good family man as well as a hard-working and kind-hearted person.

**S.Sh. Zakhidov
City of Samarkand**

[Signature]

08.03.2015

[Upper portion of this copy appears to be missing]

...Dearie

United States District Court

I, Dilafruz Makhmudova, reside in the republic of Uzbekistan, in the city of Samarkand. I have known Akmal Narzikulov for over 11 years. During all that time, he has given a good account of himself. He is a good friend and son who respects, loves and takes care of his parents and friends. I know that Akmal lives in the USA and that recently he worked as a driver at a CAR SERVICE.

I know Akmal as a good person and as a kind man; one can always trust him and rely on him.

Dilafruz Makhmudova [Signature]

Tel: +99897 914 45 85

Honorable Raymond J. Dearie
United States District Court

I, Khalima Kurbanova reside in the republic of Uzbekistan, in the city of Samarkand, and I have known Akmal Narzikulov since birth. He is my nephew. He was a studious pupil at school, did well academically, and was held in respect by his teachers, relatives and friends. While he was living in Uzbekistan, he gained a reputation of an exemplary citizen, excellent family man as well as a good and kind-hearted son. After he had moved to America, he conscientiously worked and helped his family. I am certain that he was incapable of committing an unlawful action.

Khalima Kurbanova

Signature

+99891 523 23 41

Honorable Raymond J. Dearie
United States District Court

I, Kuliev Sherzod reside in a city of Samarkand, Uzbekistan, know Akmal Narzikulov and his family. I know Akmal since childhood. He is a kind and a good person, he helps and respects everybody, and he worries about his relatives and close ones, and cares about them. Akmal won a Green Card and now resides in USA, lately he worked as a driver for a Car Service.

I respect Akmal for being kind and good person.

Kuliev Sherzod Signature

Tel: +998915470029

Honorable Raymond J. Dearie
District Court
Eastern District of New York

Characteristic

For Akmal Narzikulov, who was born in the city of Samarkand.
I was growing up with Akmal Narzikulov, he is a proper, hardworking, fair, and responsible person. He is good family man. He is respected among his peers.

Zahidov F. Sh.
Samarkand

08-04-2015

Signature

Honorable Raymond J. Dearie
United States District Court

I, Shavkat Kuliev, reside in the city of Samarkand, Uzbekistan. I have known Akmal Narzikulov for a really long time already - for over 30 years. Akmal Narzikulov is my first cousin. For all the time I have known him, he has been a good, kind and caring person. During the entire time that Akmal lived in Uzbekistan, before he moved to the United States, he did well at school; after he had finished his studies, he worked and helped his parents; he always was a kind-hearted person and he always helped his friends and family. After Akmal had won a Green Card and moved to the USA, he was still trying to help his friends and family by working as a driver at a CAR SERVICE [sic]. For all the years I have known him, Akmal has been a very hardworking and kind person on whom one could rely.

Shavkat Kuliev [Signature]

Tel: +9989 153 77 90

Honorable Raymond J. Dearie
District Court
Eastern district of New York

Characteristic for Akmal Narzikulov

Akmal Narzikulov was born in a working family. He was a good student in school, was an active participant in a school events. Everywhere he always showed a right spirit. He doesn't drink or smoke, and always finishes the task that he started. He is kind, responsive, and very caring person. He is a loving son and a good father.

Signature

**Kurbanova Habiba
Samarkand city**

08-04-2015

**Honorable Raymond J. Dearie
United States District Court**

I, Kurbanova Mahbuba, residing in Samarkand, Uzbekistan am an aunt of Akmal Narzikulov. Akmal was growing up in front of my eyes. I know him as attentive, sensitive, conscientious person. Akmal is a kind and responsive nephew, always ready to help in any situation.

Tel: +998907433336

Signature

Kurbanova M.

Honorable Raymond J. Dearie
United States District Court

I, Dilduz Akramova, reside in the city of Samarkand, Uzbekistan. I am a first cousin of Akmal Narzikulov. I can describe Akmal as a good person. Akmal is a thoughtful and caring person as well as kind and attentive. Akmal treats everybody really well, and he is a good family man. He has been living in the USA since 2006 and he has been working at a Car Service since 2007.

Tel: +99893 387 97 80

Dilduz Akramova
[Signature]

Honorable Raymond J. Dearie
United States District Court

I, Maruf Kurbanov, reside in the city of Samarkand, Uzbekistan, and I have known Akmal Narzikulov since his infancy because Akmal is my nephew. Since his very early age, Akmal has been noted for his amiability. Akmal always treats his family and friends in the best possible way. Akmal has always been willing to help during hard times. Akmal has been living in the USA since 2006. He worked as a driver at a CAR SERVICE since 2007.

Maruf Kurbanov

[Signature]

Tel: + 99890 530 61 55.

Honorable Raymond J. Dearie
United States District Court

I, Alisher Yakubov, reside in the city of Samarkand, Uzbekistan, and I have known Akmal Narzikulov for over 15 years. For all the period of our acquaintance, I can describe Akmal as a good person. I know that Akmal lives in the USA and I know that he worked as a driver at a CAR SERVICE. All people who know Akmal know him as a good person, one could rely on.

Alisher Yakubov

[Signature]

Tel: +9989 270 99 33

Honorable Raymond J. Dearie
United States District Court

I, Michael Lvov, residing in Samarkand city, Uzbekistan, know Akmal Narzikulov from young age.
I can characterize Akmal as a kind, conscientious person, the one who can always be there to
help in any situation.

I know Akmal only from a positive side as good friend, and also as a good family man.

Lvov Michael Signature

+998901912050

To Federal Judge
Raymond J Dearie
From Aslam Mirsaidov

Honorable Judge Dearie,

I Aslam Mirsaidov, met Akmal Narzikulov upon arrival to America in 2010. For some period of time we were neighbors. He worked as a driver at a Car Service. He was a good friend, very social and kind. He respected all of our children and grownups. He always wanted to help, if someone got sick, he was ready to take that person to the hospital using his car. He [UI] person and very kind.

Aslam Mirsaidov
Signature

To a Federal Judge
Raymond J Dearie
From: Matlab Narzikulova

Honorable Judge Dearie,

I, Matlab Narzikulova, got acquainted with Akmal Narzikulov in 2011, upon arrival to America we lived near each other as neighbors. He worked as a driver at a Car Service. He was a kind person, nicely treated people, was very communicable. He respected all our neighbors. He was always ready to help with his car. He was very nice and kind person.

Matlab Narzikulova
Signature